

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
SWEIGERT, : Docket #18cv8653
 : 1:18-cv-08653-VER-SDA
 :
 Plaintiff, :
 :
 - against - : New York, New York
 : December 15, 2021
 GOODMAN, :
 :
 Defendant. :
 :
 ----- : REMOTE DISCOVERY
 : CONFERENCE

PROCEEDINGS BEFORE
HONORABLE STEWART D. AARON
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

HONORABLE STEWART D. AARON (THE COURT): This is the matter of Sweigert against Goodman, 18cv8653. This line is being recorded. This is Magistrate Judge -- this is Magistrate Judge Aaron, if I could have the parties identify themselves, please, for the record.

MR. D. GEORGE SWEIGERT (THE PLAINTIFF): This is the plaintiff, D. George Sweigert.

MR. JASON GOODMAN (THE DEFENDANT): Pro se defendant, Jason Goodman.

THE COURT: Good afternoon. The purpose of this conference is to discuss certain discovery issues and I did review the parties' correspondence that I received prior to today and I want to first talk about the videos. I saw in the filing that the defendant made yesterday that with respect to the videos that were requested by the plaintiff, there were links provided in the exhibit that was attached to the letter and those links appeared to me, for the most part, to match up to the requests. So let me hear from the plaintiff as to whether, what deficiencies he asserts with respect to the videos requested?

THE PLAINTIFF: Well, Your Honor, I haven't actually checked those links but I'll take your word that if those links work they can be substitutes. However, the point of the matter was that if that's

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2 the title that those videos were given then, and those
3 links are going to another location to get that video
4 and the videos aren't, haven't changed at all, then I
5 suppose that would be acceptable.

6 THE COURT: Okay, Mr. Sweigert, you ought not
7 take my word for anything, all I indicated was that I
8 saw there were links that were provided. I admittedly
9 clicked on one or two, but it's not my job to see
10 whether the discovery provided to you was adequate. So
11 unless you tell me otherwise, I am going to take Mr.
12 Goodman's response as satisfying the obligation that
13 was imposed upon him.

14 I now want to talk about the videos that were
15 referenced in the report and recommendation I made to
16 Judge Caproni. I saw, Mr. Goodman, in your response
17 of yesterday, that with respect to the videos that
18 relate to what I refer to as statements four and five,
19 that those, YouTube took them down or something along
20 those lines, and I'd like to understand whether you're
21 telling me that those videos, therefore, are no longer
22 available to you?

23 THE DEFENDANT: Your Honor, I go to what I
24 would categorize as great lengths to preserve every
25 digital document that I create. I've been in the

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2 video production business for three decades. And just
3 because YouTube takes down a channel or Mr. Sweigert
4 writes letters to BitChute and other people and files
5 complaints against my social media properties with the
6 specific intention of getting them taken down, even
7 when that happens I preserve copies. And while it is
8 possible that I may, over the course of thirty years,
9 have made an error and may have lost some of what I've
10 created, I do not believe any of the videos in
11 question have been lost, I have them all, and I have
12 gone to great lengths to provide them to the plaintiff
13 while he is simultaneously trying to get them
14 eliminated from the internet so he can write pleadings
15 claiming that I deleted them.

16 THE COURT: Okay, so I'm aware that you
17 previously provided a, in your May 15th supplemental
18 interrogatory responses filed at ECF 274, you
19 indicated you were sending to Mr. Sweigert a USB
20 memory stick containing 46.8 gigabytes of video data,
21 that was in response to request number 2(D), and you
22 indicated at that time it was mailed to plaintiff's
23 Nevada City address. In the most recent correspondence
24 from you, you talk about different amounts of data.
25 For example, in one part of the letter you sent, of

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2 yesterday, you indicated it was 64 gigabytes on a
3 thumb drive in the initial discovery phase. But what
4 I'm trying to get at is the videos that were
5 referenced in my report and recommendation as not
6 having been provided to me, were they provided to Mr.
7 Sweigert on that thumb drive or in any other manner?

8 THE DEFENDANT: So to clarify the thumb drive
9 issue, it's a 64 gigabyte bucket with 48 gigabytes
10 worth of material in it. And, yes, that was provided
11 to Mr. Sweigert, I may have not recalled correctly
12 when I wrote that thing which address I sent it to,
13 it's become quite a challenge for me to keep track of
14 Mr. Sweigert's mailing addresses and where I am
15 supposed to produce this material to. If it was sent
16 to the Nevada City address, then that would explain
17 why he hasn't received it because, as you may recall
18 from our previous conferences, so far every email
19 address he's given me, when I check with the post
20 office they say it's not his address, and the stuff
21 gets lost or returned, or whatever.

22 So given the facts you've just reminded me of
23 there, it is possible that Mr. Sweigert doesn't have
24 that thumb drive. But it was sent and I do believe it
25 contained every video that I am aware of that has

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2 anything to do with him or anything that he has asked
3 for. And I will double check but I thought I had
4 included links in my response that satisfied what you
5 were looking for, Your Honor. I have no interest in
6 blocking any access to any video I have ever created
7 and I even probably in this letter that he didn't get,
8 I said this thumb drive contains everything you're
9 looking for and if there's anything missing, there's
10 no need to file a pleading, I'll give you whatever you
11 want. I, he can scrutinize any video I've ever made, I
12 think the question is why is Mr. Sweigert going to
13 such lengths to delete my video channels. Even when I
14 create an evidence channel on BitChute, he contacted
15 BitChute and told them that this was a copyright
16 infringement, that was a deception. Using his videos
17 as evidence in this lawsuit is not a copyright
18 infringement, it is a fair use of the video.

19 THE COURT: Okay, Mr. Sweigert, in a letter,
20 or to be more precise, in a memorandum and declaration
21 you filed with the Court on June the 2nd of this year
22 at ECF 281 and 282, first of all, in the memorandum at
23 page 7 you stated that a USB jump drive that contained
24 137 video files in the MP4 format was received via
25 postal authorities, and then in the declaration that

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2 accompanied it, it indicated the USB contained
3 approximately 43.5 gigabytes of information. So I
4 assume you are not saying that you didn't get that
5 jump drive, what you had previously been saying, that
6 there were videos that were missing from it, but my
7 question for you, Mr. Sweigert is do you contend that
8 that thumb drive did not contain the videos that were
9 referenced in my report and recommendation that I
10 didn't have access to?

11 THE PLAINTIFF: Well, okay, there's some
12 compounded things here and after I answer this
13 question I would like to update the Court on all the
14 links that I checked while the defendant was speaking,
15 the links that supposedly work. So I would like to address
16 that after this.

17 So the video, the videos that we're talking about,
18 so there's two jump drives, if you want to think of it that
19 way, the one that we're talking about that the declaration
20 was written about on June 2nd, that it's just a curiosity
21 that there was approximately 66 videos that were my creation
22 on a deactivated YouTube channel. So for whatever reason,
23 the defendant decided to additionally put 66 videos on that
24 jump drive which were not his creation, which are not
25 subject to this litigation, which are irrelevant. So that

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2 leaves I think 40 videos approximately and the videos that I
3 was requesting that we, the question about these links, we
4 can deal with that in a second, those were the videos that
5 do not appear in those 44. So the first jump drive of June
6 2nd were not inclusive of the videos that I requested for
7 the second discovery responses, second jump drive, if you
8 will, and those are the questions that I had.

9 THE COURT: All right, I'm going to just restate
10 my question so we're clear. There were certain videos that
11 I, personally, did not have access to when I issued my
12 report and recommendation on the summary judgment motion. I
13 identified them as consisting of relating to statements
14 four, five, six, seven, eight and nine.

15 THE PLAINTIFF: Right.

16 THE COURT: Mr. Sweigert, do you have, do you have
17 those videos?

18 THE PLAINTIFF: I don't know. I really, I'm not
19 trying to be smart-alecky or not. I think if The Trolls of
20 Mt. Shasta was one of them, I do have that video, that I'm
21 pretty sure of. The second one, something about, I don't
22 know, I would have to double check.

23 THE COURT: Okay, because I construed the request
24 that you made to Mr. Goodman, pursuant to my Court Order, as
25 being the videos that were you, and I'm going to use your

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2 word, missing, the ones that hadn't been provided to you,
3 and you hadn't listed those and, therefore, it led me to
4 believe that you have them. So and that's going to be,
5 that's the assumption that I'm proceeding under. You wanted
6 to say something else about Mr. Goodman's response that you
7 received yesterday? I know it was dated earlier, it was
8 dated December 1st.

9 THE PLAINTIFF: Well the only thing I think for,
10 to provide absolute clarity, is this issue about BitChute
11 and videos that are on BitChute, and evidence repositories
12 that are created, all that content is my content, it has
13 nothing to do with any potential videos that would have
14 content of defamation and slander. So when Mr. Goodman says
15 that I'm actively trying to defeat his ability to have
16 videos or produce videos, if we're talking about him
17 producing my videos, which I already have copies of, and him
18 taking those videos and putting them on yet another
19 (indiscernible) social media property, it's somewhere out in
20 the internet, and it's all my content, I own it, and he puts
21 it up, I have it taken down and he says I'm obstructing, I'm
22 causing problems, I think that's just an argument. I mean it
23 reveals itself.

24 So I just wanted to clear that up for the Court
25 that this issue about BitChute is not about video content

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2 that he owns or he's created, it's about video content that
3 I own and I created.

4 THE COURT: All right. So from my perspective,
5 we're done on videos. The --

6 THE RESPONDENT: Your Honor, may I address
7 that?

8 THE COURT: No, you may not. This is all back
9 and forth between the two of you and having nothing to
10 do with the issues in my case. I'm dealing with the
11 issues in my case. So as far as I'm concerned, I'm
12 done on videos. I did see that, Mr. Sweigert, you put
13 in additional requests for videos which is not what the
14 Court intended, and I am upholding the objections that Mr.
15 Goodman made to them. And based upon what's been produced,
16 I think you have the videos that you requested and,
17 obviously, whatever questions you want to ask Mr. Goodman at
18 his upcoming deposition about those videos, you certainly
19 are free to ask.

20 I want to turn next to the issue of the
21 deposition. I have been advised by the Court that due to
22 extant Covid protocols, we are not holding depositions at
23 the courthouse. Pre-Covid that is something that was done,
24 but I'm told that I can't do that. So, therefore, I'm going
25 to order that the deposition proceed remotely and, Mr.

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2 Sweigert, it is your option, it will be at your expense and,
3 therefore, your option, to do it by telephone. On the
4 telephone will be, or would be if you do it by telephone,
5 you, me, Mr. Goodman and a court reporter who is hired at
6 your expense. Alternatively, Mr. Sweigert, there are video
7 deposition services out there post pandemic that set up a
8 screen and would have all of us on video, and there would be
9 somebody who is recording it. They are professional
10 videographers using videoconferencing technology, and
11 that's what the rules require and that's what I am going
12 to require. So I'm going to give you a week to decide
13 whether you want to do it by telephone or whether you want
14 to do it by videoconferencing technology using a
15 videoconferencing deposition firm. These firms provide
16 both the court reporter, as I understand it, as well as
17 the videographer, and both the court reporter and the
18 videographer are certified to perform those functions.

19 And so, Mr. Goodman, you received the letter, as
20 I did, from Mr. Sweigert, setting forth the proposed
21 dates, February 22nd, February 23rd, February 24th and
22 February 25th, which of those dates would you like to
23 choose?

24 THE DEFENDANT: That's posed to me, Your Honor,
25 or to Mr. Sweigert?

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THE COURT: Mr. Sweigert --

THE DEFENDANT: The 22nd.

THE COURT: Let me finish. Mr. Sweigert told me his available dates in a letter dated December the 9th and I assume you received a copy of this --

THE DEFENDANT: Yes.

THE COURT: And it lists February 22nd, 23rd, 34th and 25th and I'm asking you to pick one of those dates.

THE DEFENDANT: The 22nd, please, sir.

THE COURT: Okay. So it will be February the 22nd and Mr. Sweigert, within seven days you'll advise, you'll file a letter indicating whether it's going to be by telephone or by, you know, video. And once you advise that I'll enter an order requiring you a certain number of days in advance to provide to Mr. Goodman and to the Court either A) dial-in information, again, court reporting services should be able to make a dial-in number available if you choose telephone, and if you choose videoconferencing, obviously that court reporting service can provide a link that both Mr. Goodman and I, and the court reporter and the videographer can, can log in to for lack of a better term.

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Any questions about that, Mr. Sweigert?

THE PLAINTIFF: Just to understand, both options, it's a, I make the private arrangements with a private carrier, the Court's not involved in that, I would make the arrangements?

THE COURT: That's correct.

THE PLAINTIFF: Okay.

THE COURT: But there are certifications that are associated with this type of work.

THE PLAINTIFF: Yes, I understand.

THE COURT: There are firms out there that do this kind of thing. And obviously the New York based ones, there are many, many and I am confident, if you're not familiar with them, I may have discussed these with you in the past and if I haven't, for both sides, the New York Legal Assistance Group, they're referred to as NYLAG, N-Y-L-A-G, and the contact information for NYLAG is available on the Court's website, they give advice to pro se litigants and I am confident that NYLAG would be able to provide you information if you didn't have otherwise access to it as to certified firms that that service, court reporters as well as videographers.

THE PLAINTIFF: That sounds great, Your Honor,

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2 that's how I'll proceed, thank you.

3 THE COURT: All right, so February the 22nd it
4 is. So that's all that I wanted to cover. Mr.
5 Sweigert, I saw you had other things in correspondence
6 to me so I'll give you a brief opportunity to raise
7 whatever it is you want to raise and then, Mr. Goodman,
8 I'll obviously hear from you. So, Mr. Sweigert, go ahead.

9 THE PLAINTIFF: Well I don't want to belabor
10 anything. I think, just on the one point of my mailing
11 address, my mailing address is South Dakota. I went to
12 great expense to get this mailbox really as a courtesy to
13 Mr. Goodman, so that's where items should be sent and I've
14 been really clear about that. And so all I can tell you
15 is I didn't get anything. So I think that's the issue on
16 the mailing and I think that clears things up on this end.
17 I don't think there is any reason to go forward.

18 I was in discussions in email back and forth
19 with Google's legal staff and Mr. Goodman about the
20 possibility of a Rule 45 subpoena to get some information
21 from Google, the Google account at YouTube of the
22 Jason Goodman account. And I know in the past the
23 Court has said that if you're seeking subpoenas, the
24 subpoena is really something that the Clerk of the
25 Court stamps off and takes care of, but I do have an

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2 interest in continuing working things out with Google
3 and perhaps getting a valid Court issued subpoena to
4 get certain information from Google on that YouTube
5 account. And I would be interested to find out the
6 Court's opinion on this matter.

7 THE COURT: Well my opinion is discovery is
8 closed. Let me understand what it is that you're
9 seeking from Google. You told me you have the videos
10 and that the links work, what is it that you're
11 seeking to get from Google outside the discovery
12 period? There is a mechanism through a motion to try
13 to obtain discovery outside of the expired period,
14 there are certain standards that must be met. And what
15 I want to understand is what is it that you're seeking
16 from Google?

17 THE PLAINTIFF: Well, if a reporter at *The New*
18 *York Times* wrote an article on a word processor saved
19 that file, those are the raw files we're talking
20 about, they're just raw computer files. So when Mr.
21 Goodman sends me these files, they're raw computer
22 files. Now when the actual story is printed in *The New*
23 *York Times*, there might be a headline, there might be
24 a caption to a photo, things of that nature. And some
25 of these raw files when they're sent to Google, Mr.

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2 Goodman's added headlines and video descriptions that
3 in themselves contain defamatory information. So that
4 was my interest in getting a complete totality of
5 understanding the context of this electronic file was
6 published in this forum, this is how it appeared, this
7 is the headline that was used, this is the video
8 description that was used, here's the thumbnail that
9 appeared, so it was really just a contextual thing to
10 have a complete picture of how these videos were
11 presented to the public.

12 THE COURT: Okay. All I can say is if you
13 want to try to subpoena Google, you can make a written
14 motion and, again, you could speak with NYLAG, if you
15 like. Under Rule 16(b) of the Federal Rules of Civil
16 Procedure, you have to make a showing as to good cause
17 to reopen discovery and that the discovery sought is
18 relevant and proportional to the needs of the case. I
19 should point out, even if I were to grant you
20 permission to serve a subpoena, Google would have the
21 right as a third party to assert objections to the
22 subpoena, and under Rule 45 one of the things they
23 have the right to do is to cost shift. They get to
24 say, you know what, we have to hire people to do this,
25 et cetera, and we'll do this so long as Mr. Sweigert

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2 reimburses our expenses of dollars X. So I just point
3 that out as something for you to be aware of should
4 you choose to file such a motion, that just because
5 permission is granted to issue the subpoena, doesn't
6 mean Google needs to comply with it, it means Google
7 gets to assert objections and seek to cost shift.

8 Did you have anything else -- did you have
9 anything else, Mr. Sweigert?

10 THE PLAINTIFF: Thank you for the explanation,
11 I understand that, and I don't have anything else,
12 Your Honor.

13 THE COURT: All right. Mr. Goodman, we're
14 sticking to the discovery in this case, do you have
15 anything that you would like to raise with respect to
16 the discovery in this case?

17 THE DEFENDANT: Well, I just want, you've
18 mentioned here that Google could object to a subpoena
19 request, can I object to a subpoena request?

20 THE COURT: Yes, Mr. Goodman, you would be
21 able to, if a motion were made by Mr. Sweigert, you
22 would have the opportunity to object to the subpoena
23 being issued, absolutely.

24 THE DEFENDANT: Okay, so I think it's
25 important in consideration of the possible motion that

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2 we're discussing, that the Court be made aware that
3 Mr. Sweigert was not able to determine if he had this
4 material that he's asking for, he doesn't know. And I
5 believe it's because so much of his time is occupied
6 with bombarding me with emails that are unrelated to
7 this case, interfering with other cases, harassing my
8 family members and doing all kinds of things that are
9 way outside the scope of anything having to do with
10 this, I would say that this, you know, proposed
11 subpoena to Google falls into that category. And I
12 would like to request the Court, I don't want to make
13 any more filings, you told us not to file anything, so
14 I would like to make a specific request --

15 THE COURT: Mr. Goodman, I never told you not
16 to file anything.

17 THE DEFENDANT: Ah, sorry, I misunderstood.

18 THE COURT: I don't know where you got that
19 from.

20 THE DEFENDANT: I misunderstood.

21 THE COURT: If a motion is made, you
22 absolutely are entitled to respond to it, if you have
23 a motion to make, you should make a motion.

24 THE DEFENDANT: Very good, thank you, sir.

25 THE COURT: Okay? Anything else relating to

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2 discovery in this case, Mr. Goodman?

3 THE DEFENDANT: I presume discovery is closed
4 and I have no further questions.

5 THE COURT: It's closed except for your
6 deposition.

7 THE DEFENDANT: Right.

8 THE COURT: Yes, okay. Very well, so you can
9 expect to see an order setting the February 22nd date
10 for the deposition as well as requiring Mr. Sweigert
11 within seven days to advise the Court as to the method
12 by which he, the remote method by which, by which he
13 will take the deposition. Thank you very much and this
14 matter is adjourned.

15 THE DEFENDANT: Sorry, I have one further
16 question, Your Honor.

17 THE COURT: Did we lose Mr. Sweigert?

18 THE PLAINTIFF: I'm still here, Your Honor.

19 THE COURT: Okay, go ahead, Mr. Goodman,
20 relating to discovery in this case, go ahead.

21 THE DEFENDANT: Relating to this case. Do I
22 have, can the Court -- I guess I don't want to ask you
23 for legal advice, I'm not trying to do that, I think I
24 need to contact an attorney. I just, I need a
25 restraining order against Mr. Sweigert, he does

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nothing but harass me all day. That's all I have to
say.

THE COURT: All right, this matter is
adjourned, thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Sweigert v. Goodman, et al., Docket #18cv8653, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: December 30, 2021